

MAIDSTONE BOROUGH COUNCIL

RECORD OF DECISION OF THE LEADER OF THE COUNCIL

Decision Made: 30 September 2011

PROPOSED REVISIONS TO THE DEED OF SETTLEMENT WITH GOLDING HOMES

Issue for Decision

To consider agreement to proposed revisions to the programme of investment with Golding Homes, as set out in the Deed of Settlement.

Decision Made

1. That the proposed revisions to the council's Deed of Settlement with Golding Homes to deliver a programme of affordable new homes for local people be agreed.
2. That delegated authority be given to the Director of Regeneration and Communities to agree the proposed revisions in writing with Golding Homes, in accordance with clause 2.5.8 of the Deed of Settlement.
3. That delegated authority be given to the Head of Legal Services to arrange for the necessary variations with respect to change of tenure, to be undertaken on the relevant s106 agreements.

Reasons for Decision

Background

A previous report to the Cabinet Member for Community and Leisure Services issued on 8th September 2011 by the Director of Regeneration and Communities, made the Cabinet Member aware that Golding Homes were seeking the Council's agreement to make revisions to the deed of settlement with the Council.

That report proposed a change to the agreement by recommending a capital grant reallocation of £63k to help facilitate the delivery of the teenage pregnancy scheme at Armstrong Road.

It was noted that Golding Homes were seeking the Council's agreement to this scheme in advance of the remaining proposed changes which were currently under consideration, and would be the subject of a future Cabinet Member report. It was therefore recommended that the £63k be taken from the overall budget agreed as part of the revisions to the

agreement with Golding Homes. The Decision Notice was approved and signed by the Cabinet Member for Community and Leisure Services on the 16th September 2011.

The report of the Director of Regeneration and Communities on which this decision is based, set out the historical context to the agreement between the Council and Golding Homes, and sought agreement to all the proposed changes requested by Golding Homes, and the reasons for doing so.

On the 2nd February 2004, the Council and Golding Homes (formerly Maidstone Housing Trust) entered into a number of agreements relating to Golding Homes' purchase of the Council's housing stock.

Following this, the Council and Golding Homes entered into a non-binding Memorandum of Understanding on the 7th June 2006, the purpose of which was to record the intentions of the Council and Golding Homes to work together in partnership for the benefit of the residents of Maidstone.

The Memorandum envisaged a three year investment programme with Golding Homes to provide a development package of new affordable housing in the borough by March 2009. It was also the understanding that the Council would expect Golding Homes to be the major recipient of any finance available in future years, and would hope to be able to support Golding Homes' activities, subject to funds being available and identifying suitable schemes.

The Council and Golding Homes agreed to vary the terms of the aforementioned agreements, and to terminate in its entirety the Memorandum of Understanding dated 7th June 2006, and to record their agreement in the Deed of Settlement dated 4th February 2010.

The agreement stated that the Council would contribute the total sum of £2,340,908 to Golding Homes in respect of certain affordable housing schemes, to be delivered within certain timescales, providing a total of 246 affordable homes for local people. This equated to an average grant from the Council of just over £9k per unit.

The payments for individual schemes are to be paid to Golding Homes in the following two instalments:

- i) 50 per cent of the relevant total sum being paid when the contractor takes possession of the relevant site in accordance with the signed main building contract.
- ii) The remaining balance of 50 per cent to be paid on the date the scheme has achieved practical completion in accordance with the terms of the main building contract, and is fit for occupation as a residential development, in accordance with National House-Building Council requirements.

In the cases where schemes also require funding from the Homes & Communities Agency (HCA), the agreement specifies that the Council agrees to use best endeavours in providing Golding Homes with reasonable assistance and support in respect of their application/bids to

attract funds from the national affordable housing pot.

The agreement included the provision under clause 2.5.8, for the Council to consider any reasonable proposal, set out in writing from Golding Homes, for the contributions (or any part thereof), to be reallocated to an alternative affordable housing scheme, to be delivered in a similar timescale, type, size and value. This is in the event that Golding Homes are either unable to deliver the number of affordable housing units specified and/or to achieve practical completion of any of the development schemes referred to in the agreement.

The agreement further states that any reasonable requests by Golding Homes to consider any reallocated payments need to be made by 31st August 2012. The Council cannot unreasonably withhold its approval of such alternative schemes, having taken into account the aforementioned requirements set out in clause 2.5.8.

The originally planned schemes for investment, as set out in the agreement are shown in table 1 below, together with the number of units, MBC grant contribution, original forecast for completion and long stop date for delivery of the scheme.

The long stop date, is the date specified within the agreement, by which Golding Homes are expected to deliver the required number of affordable housing units on each particular scheme. In the event that Golding Homes do not deliver the number of affordable housing units on any particular scheme prior to the long stop date, Golding Homes are obliged to repay all payments received in respect of that scheme to the Council by a specified date within the agreement.

Due to the nature of the contributions and delivery mechanism, no specific practical completion or long stop dates were set for the schemes at Headcorn Doctors Surgery, Church Street or Woolley Road. However, Golding Homes are still required to make any requests to the Council to reallocate the contributions (or any part thereof) for these schemes to alternative affordable housing schemes by the 31st August 2012.

Table 1 – Originally Planned Schemes

Originally Planned Schemes	Units	MBC Grant	Practical Completion Forecast	Long Stop Date
Bowling Green, Parkwood	18	£162,000	2010/11	31 st July 2011
Former Council Depot Armstrong Road	96	£864,000	2011/12	31 st July 2012
Former Park and Ride Site	35	£315,000	2011/12	31 st July 2012
Collington Terrace	12	£108,000	2011/12	31 st August 2012
Winch's Garth, Staplehurst	5	£45,000	2011/12	31 st August 2012
Bell Lane	5	£45,000	2011/12	31 st August

Allotments, Staplehurst				2012
Kent House, East Farleigh	11	£99,000	2011/12	31 st August 2012
Knights Way, Headcorn	3	£27,000	2011/12	31 st August 2012
Headcorn Doctors Surgery	25	£351,908	Not applicable	Not applicable
Church Street	20	£180,000	Not applicable	Not applicable
Woolley Road	16	£144,000	Not applicable	Not applicable
Total	246	£2,340,908		

Proposed Revisions

In accordance with the aforementioned clause 2.5.8 of the agreement, Golding Homes have made a request in writing (dated 25th July 2011) which seeks the Council's agreement to various revisions to the programme of investment. The revised proposals for investment are shown in the tables below.

Table 2 shows those schemes for which there is a change proposed in terms of the timescale for delivery. There is also a change proposed with respect to the level of investment and number of units delivered on the former Council depot at Armstrong Road and Park and Ride sites, which are shown in table 3 below.

Table 2 – Change of timescales

Scheme	Units	Original Practical Completion Forecast	Long Stop Date	Revised Practical Completion Forecast
Former Council Depot, Armstrong Road	75	2011/12	31 st August 2012	June 2012
Former Park and Ride site	26	2011/12	31 st July 2012	June 2012
Knights Way, Headcorn	3	2011/12	31 st August 2012	June 2012

Table 3 shows those schemes where there is a reduction of grant (£558k) proposed as a result of some schemes being reduced in unit numbers, or taken out of the programme completely for delivery reasons.

Table 3 – Reduction of unit numbers/grant

Scheme	Units	Change
Former Council	-21	-£189,000

Depot Armstrong Road		
Former Park and Ride Site	-9	-£81,000
Kent House, East Farleigh	-11	-£99,000
Woolley Road	-16	-£144,000
Bell Lane Allotments	-5	-£45,000
Totals	-62	-£558,000

As can be seen from the table above, the total sum that Golding Homes have requested to reallocate to alternative affordable housing schemes is £558k. As previously mentioned, the reallocation of £63k of that total towards the additional cost of providing the teenage parents supported housing scheme at Armstrong Road has already been approved in advance of this report, under a previous separate report to the Cabinet Member for Community and Leisure Services.

It has been agreed that the £63k be found from the overall budget agreed as part of the revisions to the agreement with Golding Homes. As this is counted as additional expenditure towards existing units on Armstrong Road (which will be creating no new net replacement additions), the overall proposed revisions to the agreement result in 62 affordable housing units, being replaced with 55 new affordable housing units. A net loss of seven affordable housing units, being the six self contained units being provided in the teenage parents scheme on Armstrong Road, and the one unit that has now been converted into communal facilities for residents of the scheme.

Table 4 shows the alternative affordable housing schemes which Golding Homes have requested the sum of £558k be reallocated to.

Table 4 – Proposed Alternative Schemes

Scheme	Units	MBC Grant	Position	Practical Completion Forecast
Armstrong Road Teenage Parents Scheme	-	£63,000	Planning consent granted. On site.	2011/12
North Street, Sutton Valance	12	£108,000	Planning consent granted. On site.	2011/12
Coombe Farm Phase 3A	20	£180,000	Planning consent granted. Ready to commence.	2012/13
Bethersden Court	11	£99,000	Planning consent granted. Ready to commence.	2012/13
Finch Court	12	£108,000	Due to Planning Committee 22 nd September 2011. Out to tender.	2012/13
Totals	55	£558,000		

There are several changes proposed, the aim of which is to concentrate on more strategic projects, the most certain programme in terms of delivery and the earliest yield of new homes for the Council. As can be seen, all of the proposed alternative schemes have planning consent and are ready to start on site or commence, with the exception of Finch Court. This is expected to go before planning committee with a recommendation to approve with conditions on 22nd September 2011. This report does not seek to prejudice the outcome of this decision.

Should this scheme not achieve planning consent for whatever reason, an alternative deliverable scheme will be considered, if so requested by Golding Homes prior to 31st August 2012, in accordance with clause 2.5.8 of the agreement. In the event of there not being a suitable scheme to be considered, the total sum allocated to Golding Homes will be reduced accordingly.

It is important to note that the proposed changes keep to the originally agreed total investment and payment structure for individual schemes (i.e. 50 per cent of the total sum paid upon the contractor taking possession of the site and the remaining balance of 50 per cent to be paid upon practical completion). The changes sought are primarily matters of timing and tenure.

The s106 agreements for the Armstrong Road Depot, Park and Ride site, Headcorn surgery and North Street, Sutton Valance specifically state that the affordable homes developed should be let on Social Rents. Golding Homes now seek the Council's agreement to vary the terms of the agreements to allow the affordable homes to be let on an Affordable Rent rather than a Social Rent basis, subject to the necessary authority being given by the Tenant Services Authority. This matter is linked to the enactment of the Localism Bill, which is anticipated to happen in early 2012.

Justification

The former Council depot at Armstrong Road, the former Park and Ride site, Kent House at East Farleigh, Woolley Road and Bell Lane Staplehurst are the originally planned schemes Golding Homes are now seeking to change/stop reallocating the sum of £558k to alternative affordable housing schemes. Further details regarding the reasons for Golding Homes being unable to deliver the number of affordable housing units previously specified, and/or to achieve practical completion are given below.

Armstrong Road/Park and Ride – Both schemes were originally intended to be 100% affordable housing on a Social Rent basis. However, in order to secure grant funding from the HCA, it was necessary for Golding Homes to incorporate some mixed tenure on both sites. This approach was also supported by the Council for sustainability reasons and to ensure a choice of tenure.

The scheme at Armstrong Road has subsequently been altered to include 21 homes for private sale, which has led to a reduced scheme of 75

affordable housing units, and the contribution has therefore subsequently been reduced accordingly by £189k, from £864k to £675k. The affordable provision on the Park and Ride site has been reduced from 35 to 26 affordable homes, with the remaining 9 homes for private sale. The contribution has been reduced accordingly by £81k, from £315k to £234k.

Kent House, East Farleigh – This scheme has been dropped from the programme altogether. This is due to concerns that planning consent and delivery could be significantly delayed as a result of the requirement to undertake a local housing needs survey, to establish the need for affordable housing within the parish. A local housing needs scheme has already been completed recently within East Farleigh, and therefore a further scheme at this stage is not considered to be required.

Woolley Road – The agreement envisages the Council contributing a sum of £9,000 per affordable housing unit built on land known as Woolley Road (which is in the Council's ownership) up to a maximum of £144,000. Or, an amount equivalent to the proceeds that the Council receives from the sale of the site to Golding Homes, to enable the provision of no less than 16 affordable housing units. The site however has been dropped from the programme at the Council's request due to issues with achieving a satisfactory planning consent.

Bell Lane, Staplehurst – This scheme has also been dropped from the programme given the delays on site linked to ecological issues, provision for the replacement of alternative allotment plots (which part of the site has an existing use for), and subsequent uncertainty over delivery of the site.

Although the overall proposed revisions result in the net loss of 7 affordable housing units for the same expenditure, this is considered acceptable due to gaining the valuable resource of the teenage parents' scheme at Armstrong Road. The Council's additional contribution towards the overall Armstrong Road development will enable the teenage parents' project to be delivered and safeguard the revenue funding from the Supporting People Team at KCC.

The reasons for the changes proposed also derive from a change of government policy after May 2010, of a scale that could not have been envisaged when the original agreement was entered into. The uncertainty over funding from the HCA since late March 2010 has delayed consideration of alternative substitute schemes.

The Council's contributions to the proposed alternative schemes and agreement to allow conversion of various properties from Social Rent to Affordable Rent is a key element of Golding Homes bid to the HCA for funding in the Affordable Homes Programme Framework.

The introduction of a new Affordable Rent product will allow a more diverse offer for the range of people accessing social housing. Affordable Rent homes will be made available to tenants up to a maximum of 80% of market rent and allocated in the same way as social housing is at present. Golding Homes will be able to offer Affordable Rent homes on flexible tenancies. Where tenants are eligible for Housing Benefit it will continue

to be paid in full in the same way as for social rented properties at present.

The Council has been involved in protracted negotiations with Golding Homes over the revisions to the agreement over recent months. Negotiations regarding the proposed revisions have effectively been brought to a conclusion by the HCA's announcement in July 2011 of successful bidders for the £1.8bn investment in the Affordable Homes Programme.

Golding Homes (with the Council's support and assistance), have been successful in attracting £3,822,805 grant funding for 427 new affordable homes (381 on an Affordable Rent basis and 46 shared ownership). On top of this they propose converting 6 existing projects (158 homes) in their development pipeline to Affordable Rent, which would liberate a further £7.476m grant. This will result in Golding Homes providing 427 new homes for circa £11.3m, an average grant of £26,462 per new unit.

It is considered that the revisions will provide a better range of homes (more geared towards family homes and strategically important sites). The changes in tenure to Affordable Rent properties will also significantly increase the supply of rented homes that Golding Homes can provide, supporting over 200 additional new Affordable Rent homes in the next three years. Principally by the additional borrowing capacity that can be generated from the conversion of social rent properties to Affordable Rent at re-let, as well as borrowing capacity generated by the net rental income stream of the new properties developed.

Alternatives considered and why rejected

The council could choose not to approve the proposed changes, however the council cannot unreasonably withhold its approval of alternative schemes having taken into account the requirements set out in clause 2.5.8 of the Deed of Settlement. This could lead to the council being challenged for not fulfilling its obligations and not adhering to the spirit of the Deed.

The overall level of investment proposed from the council towards these alternative schemes was made known to the HCA by Golding Homes during negotiations on their bid package to the Affordable Homes Programme Framework. The HCA is pressing for all Framework contracts to be signed off by the end of September 2011. Golding's investment is channeled through the RESPOND consortium framework agreement and so all RESPOND members will need to have signed up by this date.

Golding and all other RESPOND member organisations have Board meetings scheduled for 22nd September 2011 and Golding Homes are intending seeking Board approval to the formal terms of the grant contract at that meeting, subject to the necessary revisions to the investment agreement with the council being approved. This would allow them to sign the contract within the HCA's timescale.

If the council was to withhold or deny its approval this would push Golding Homes outside the HCA's timetable as they could not recommend the

signing of the contract whilst the changes to the investment agreement from the council were not formally agreed. This would put at risk both Golding's contract and the RESPOND one. Golding's contract is for 475 new homes (381 affordable rented homes, 46 shared ownership homes and a related programme of 48 homes for sale), including a major estate regeneration programme at Wallis Avenue.

Background Papers

Housing Strategy 2011-15.

Sustainable Communities Strategy.

Record of Decision of the Cabinet Member for Community and Leisure Services – Affordable Housing Capital Expenditure – Teenage Parents Supported Housing Scheme – 16th September 2011.

<p>Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 7 October 2011</p>
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