

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

*PART 1 – PUBLIC DOCUMENT

Any interest to declare/ or conflict and any dispensation granted *[if applicable]*

SERVICE DIRECTORATE: Resources

1. DECISION TAKEN

Agreement to suspend collection of £75,526.78 clawback in respect of the disposal 12 Whitwell Road, St Pauls Walden, Hertfordshire, SG4 8BU to allow settle the opportunity to comply with the terms of an exemption namely applying the proceeds towards the provision of Social Housing or Community Benefit in the District of North Hertfordshire.

2. DECISION TAKER

Ian Couper, Service Director: Resources

3. DATE DECISION TAKEN: 9 FEBRUARY 2021

4. REASON FOR DECISION

To allow settle the opportunity to comply with the terms of the exemption by applying the funds to the development of Social Housing.

5. ALTERNATIVE OPTIONS CONSIDERED

Those defined by the protocol entered into between North Hertfordshire District Council (NHDC) and North Hertfordshire Homes (NHH), now known as settle, in respect of a proposed disposal by settle of an asset transferred under the Stock Transfer.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

Settle have been consulted regarding the level of the potential clawback payment and the details of the social housing scheme to which the funds will be applied. There is no obligation on NHDC to carry out any wider consultation.

7. FORWARD PLAN

- 7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

8. BACKGROUND/ RELEVANT CONSIDERATIONS

NHH changed its name to settle in May 2018.

Settle have submitted a request to agree an exemption to clawback in respect of 12 Whitwell Road, St Pauls Walden, Hertfordshire, SG4 8BU stating that they intend for the proceeds from the disposal to be used for the provision of Social Housing or Community Benefit in the District of North Hertfordshire. The proposed project to which the proceeds will be applied is the John Barker Place regeneration project.

Settle therefore propose to rely on exemption *xi* in the deed of covenant dated 31 March 2003 which imposes the obligation to pay clawback.

Social Housing or Community Benefit scheme

The Social Housing provision in which settle propose to invest the proceeds from the disposal is the project to regenerate John Barker Place. The unused clawback available for later phases of the John Place project (phase 3 and beyond) is £1,082,130.12. Whilst it is still considered appropriate to suspend payment of the clawback for three years to allow settle the opportunity to invest the proceeds into Social Housing, NHDC cannot at this stage agree the specific details of the Social Housing provision as until the precise proposals for the later phases of the John Barker Place regeneration project are known the clawback cannot be committed to that project.

Clawback valuation

Clawback is 25% of the greater of the Disposal Gain or the Development Gain. Settle have confirmed that the property has been sold without the benefit of planning permission, so there is no Development Gain to consider and the only relevant calculation is the Disposal Gain. The clawback calculation for the property has been agreed between the parties as follows:

Property	Disposal Gain	Clawback @ 25%
12 Whitwell Road, St Pauls Walden, Hertfordshire, SG4 8BU	£302,107.14	£75,526.78

The suspension of clawback in relation to this property will allow the funds to be allocated towards Social Housing provision. Once the detail of the Social Housing to be provided by the John Barker place regeneration scheme is known, together with the financial modelling, then NHDC will determine whether this clawback should be allocated to that scheme or an alternative scheme.

9. LEGAL IMPLICATIONS

- 9.1 The Service Director: Resources has delegated authority for 'Approvals for any overage, claw back or similar arrangement pursuant to the Stock Transfer Agreement'.
- 9.2 The obligation for settle to pay clawback to NHDC in respect of certain property disposals arises as a consequence of a deed of covenant contained within the stock transfer agreement dated 31 March 2003. The terms of the agreement provide that clawback is not payable where the proceeds from the disposal are to be used for the provision of Social Housing or Community Benefit (as defined by the agreement) in the district of North Hertfordshire. The parties have entered into a protocol which governs how this exemption will operate in practice. The protocol permits NHDC to suspend collection of clawback to allow settle the opportunity to comply with the terms of the exemption.

10. FINANCIAL IMPLICATIONS

- 10.1 The value paid by settle for the housing at stock transfer was based on its continued use as Social Housing. The deed of covenant provides compensation to NHDC for property disposals by settle that are above the equivalent value at stock transfer. As the principle of this is to protect the volume of Social Housing in the District, there is an exemption that allows settle to reinvest this money into Social Housing schemes within 3 years. As long as the request is reasonable then it should not be refused. So, this does not provide an opportunity for the Council to obtain additional funding.
- 10.2 As highlighted in section 8, a significant amount of clawback has been suspended for use on the John Barker Place scheme. This clawback would take the total to £1,157,656.90. It has also been agreed that £1,760,000 of previously suspended clawback will be used on phases 1 and 2 of the John Barker Place scheme. Within its capital programme, the Council has also allocated £1.096 million towards this scheme. The overall value of the Social Housing within the scheme will need to be reviewed when a final proposal is in place. This will determine whether it is appropriate to confirm the use of the suspended clawback and also the use of the Council’s own capital resources.

11. RISK IMPLICATIONS

No security is being sought to ensure payment of the clawback in the event that the social housing scheme is not delivered. Therefore, there is a risk that settle will not have the funds to pay the clawback if they are unable to deliver the scheme.

12. EQUALITIES IMPLICATIONS

None

13. SOCIAL VALUE IMPLICATIONS

- 13.1 *The Social Value Act and “go local” policy do not apply to this decision.*

14. HUMAN RESOURCE IMPLICATIONS

None

15. BACKGROUND PAPERS

None

16. APPENDICES

None

NOTIFICATION DATE

Signature of Executive Member ConsultedN/a- Non-Executive.....

Date

Signature of Decision Taker 

Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS