

## 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**

*To confirm that £1.76m of suspended clawback funding, that is held by settle, can be applied to the John Barker Place development in Hitchin. This will be applied to phases 1 and 2 of the development.*

#### **2. DECISION TAKER**

*Ian Couper, Service Director: Resources*

#### **3. DATE DECISION TAKEN:**

*16 November 2020*

#### **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**

*None the decision is in accordance with the stock transfer agreement and protocol.*

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

*settle have been consulted regarding the use of the funding. 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**

8.1 *There is an obligation for settle to pay clawback to NHDC in respect of certain property disposals 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.*

8.2 *Over a significant period, settle have been requesting that clawback is suspended so that the funding can be applied to their planned redevelopment scheme at John*

*Barker Place in Hitchin. There is also some more historic clawback that has been suspended, but was not at the time it was agreed, was not allocated to a specific scheme. The current respective totals are £1,399,683.26 and £1,273,912.29.*

- 8.3 *The protocol determines that clawback amounts that have been suspended should be applied to schemes that will complete within three years from the date that NHDC confirms that the clawback payment is potentially exempt. A significant amount has breached this time limit, but as allowed by the protocol, an agreement by the respective Chief Executives at the time has meant that the amounts can continue to be suspended (rather than being applied to another scheme or repaid to the Council).*
- 8.4 *The stock transfer agreement allows for suspended clawback to be used for provision of Social Housing or Community Benefit. Social Housing is defined as including “the provision of dwellings for letting at affordable or below market rents (including the sale of dwellings on shared ownership or other equity sharing terms) to persons in housing need”. There are no provisions as to what proportion of the total cost the clawback can fund, except that logically the total cost must exceed the clawback being applied.*
- 8.5 *settle have provided the following details of phase 1 and phase 2 of the John Barker Place development (i.e. the scheme that the clawback will be applied to):*

<b>Type of housing</b>	<b>Number of dwellings</b>	<b>Tenure of dwellings</b>	<b>Basis for determining rent</b>
1-bedroom retirement living	37	Rental	Social rent
1-bedroom apartments	24	Rental	Social rent
1-bedroom apartments	6	Shared Ownership	As % of unsold equity, in line with Homes England’s latest published guidance
2-bedroom apartments	16	Shared Ownership	As % of unsold equity, in line with Homes England’s latest published guidance

- 8.6 *settle have also confirmed that the above are increases to existing housing provision, and that the scheme costs will significantly exceed the clawback being applied.*
- 8.7 *The requirements in relation to the use of clawback have therefore been met. The oldest funding pot (i.e. the total which was not initially identified as being for John Barker Place) will be applied first. The remainder will come from the second pot. That will therefore leave a balance of £913,595.55 (based on disposals to date) to be applied to future phases of the John Barker Place development.*

## **9. LEGAL IMPLICATIONS**

- 9.1 *The Service Director: Resources has delegated authority under paragraph 14.6.11 (b) (viii) of the Council’s Constitution 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 arise as a consequence of a Deed of Vovenant 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.*

10.2 *As well as the suspended clawback being applied, within its capital programme, the Council has also allocated £1.096 million towards the John Barker Place scheme. The overall value of the Social Housing within the scheme will be kept under review and Council capital funding will only be released when housing units are completed.*

10.3 *The money that is subject to clawback is held by settle, so no actual payment is required in relation to this decision.*

## **11. RISK IMPLICATIONS**

11.1 *No security is sought to ensure payment of the clawback in the event that the social housing scheme is not delivered. Therefore the use of the funding reduces the risk as the social housing will actually be built and be made available.*

## **12. EQUALITIES IMPLICATIONS**

12.1 *In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.*

12.2 *There are no direct equalities implications arising from this decision.*

## **13. SOCIAL VALUE IMPLICATIONS**

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

## **14. ENVIRONMENTAL IMPLICATIONS**

14.1. *There are no known Environmental impacts or requirements that apply directly to this decision.*

## **15. HUMAN RESOURCE IMPLICATIONS**

15.1 *There are no Human Resources implications arising from this decision.*

## **16. BACKGROUND PAPERS**

16.1 *None*

## **17. APPENDICES**

17.1 *None*

**NOTIFICATION DATE**

*Date sent to all Members, put on website and appears in MIS – Committee, Member & Scrutiny Services can confirm this with you,*

**Signature of Executive Member Consulted:**

Not applicable- Non-executive.....

**Date** .....

A handwritten signature in black ink, appearing to read 'G. J. ...', written over a dotted line.

**Signature of Decision Taker** ..... ..

**Call-in does not apply to NON-EXECUTIVE DECISIONS**