



Mayor and Cabinet

Church Grove Community Led Housing: Update and amendments to the Development Agreement

Date: 14 July 2021

Key decision: No.

Class: Part 1

Ward(s) affected: Lewisham Central

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Outline and recommendations

Mayor and Cabinet is recommended to:

Agree to the update and amendments to the Development Agreement in relation to Church Grove included in section 5 of this report.

Delegate authority to the Executive Director for Housing, Regeneration and Public Realm in consultation with the Director of Law, Governance and Elections to negotiate and agree the final detail in relation to these amendments to the terms of the Development Agreement and lease with RUSS and any further amendments going forwards.

Timeline of engagement and decision-making

Mayor and Cabinet Report (Part 1 and 2) 24 October 2012

Mayor and Cabinet Report (Part 1 and 2) 4 March 2015 – Initiate competitive selection of partner to deliver community-led self-build on the Church Grove site.

Mayor and Cabinet Report (Part 1 and 2) 30 September 2015 – Award contract to the Rural Urban Synthesis Society (RUSS) and enter into development agreement.

Mayor and Cabinet Report (Part 1 and 2) 20 September 2018 – Underwrite GLA Innovation Fund Grant.

Mayor and Cabinet Report (Part 2) 5 June 2019 – Finalising the site lease.

Delegated Decision 16 November 2020 – Approval to submit Minor Material Amendment application

1. Summary

- 1.1. In September 2015 Mayor and Cabinet selected the Rural Urban Synthesis Society (RUSS) to deliver a community led self-build housing scheme on the Church Grove site, following an OJEU compliant competitive process.
- 1.2. RUSS is a community land trust (CLT) that will build 36 affordable homes, including six for social rent, and a community hub that can be used by local people and will host workshops on community led development.
- 1.3. Following their selection the Council entered into a Development Agreement with RUSS that sets out the process for how the Church Grove site will be developed and the terms for the lease of the site.
- 1.4. RUSS gained planning permission in 2018 and following high tender returns in 2019 redesigned the scheme and gained a second planning permission earlier this year.
- 1.5. Pending the updates and amendments to the Development Agreement in this report RUSS are now in a position to proceed to sign their GLA Grant Agreement, Loan Facility Agreement with third party lenders and Building Contract ahead of a start on site within the next month.

2. Recommendations

- 2.1. Mayor and Cabinet is recommended to:
- 2.2. Agree to the update and amendments to the Development Agreement in relation to Church Grove included in section 5 of this report.
- 2.3. Delegate authority to the Executive Director for Housing, Regeneration and Public Realm in consultation with the Director of Law, Governance and Elections to negotiate and agree the final detail in relation to these amendments to the terms of the Development Agreement and lease with RUSS and any further amendments going forwards.

3. Policy Context

- 3.1. The Council's Corporate Strategy (2018-2022)¹ outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of fairness, equality and putting our community at the heart of everything we do, the Council will create deliverable policies underpinned by a desire to promote vibrant communities, champion local diversity and promote social, economic and environmental sustainability. Delivering this strategy includes the following priority outcomes that relate to the provision of new affordable homes:
 - Tackling the Housing Crisis – Providing a decent and secure home for everyone.
 - Building an Inclusive Economy – Ensuring every resident can access high-quality

¹ <http://councilmeetings.lewisham.gov.uk/documents/s61022/Draft%20Corporate%20Strategy%202018-2022.pdf>

job opportunities, with decent pay and security in our thriving and inclusive local economy.

- Building Safer Communities – Ensuring every resident feels safe and secure living here as we work together towards a borough free from the fear of crime.

3.2. Homes for Lewisham, Lewisham’s Housing Strategy (2015-2020),² includes the following priority outcomes that relate to the provision of new affordable homes:

- Key Objective 1 – Helping residents in times of severe and urgent housing need.
- Key Objective 2 – Building the homes our residents need.
- Key Objective 4 – Promoting health and wellbeing by improving our resident’s homes.

4. Background

4.1. In 2019 RUSS appointed a main contractor to deliver the Church Grove development, but following high works costs in the tender returns have sought to redesign the scheme. The contractor has been kept involved through a Pre-Contract Services Agreement providing cost, programme and design input.

4.2. The high tender returns are believed to be caused by a number of factors including changes to fire risk strategies (resulting from the Grenfell and Barking fires) and Brexit uncertainty. The increased costs also triggered a review of the cross-subsidy model for the social rented flats. Going forward RUSS now require subsidy to meet the construction costs for the social rented homes.

4.3. RUSS have since worked collaboratively with the contractor and the Lewisham planning department to redesign the scheme and to reduce costs without reducing the quality or amount of housing they are delivering.

4.4. This has resulted in a more efficient building, with three further homes. This brings the total to 36 homes. Of these, six are social rent with nomination rights in perpetuity for the Council. This is an increase of one home on the previous design which will contribute further much needed social rented homes in the borough. Overall the development will deliver:

- six homes at Social Rent with nomination rights in perpetuity,
- two are London Living Rent for young people unable to afford market rents,
- twelve are Shared Ownership an effective discount on open market rates for people who cannot buy on the open market,
- sixteen are Shared Equity at 80% of market rate for people wishing to downsize or to own their first home.

4.5. RUSS have agreed an increased loan from their third party lenders and an increased grant from the GLA. These now cover the build cost and leave RUSS with a long term debt that will be paid off by the income from the rental elements of the development.

² <https://lewisham.gov.uk/-/media/files/imported/housingstrategy2015.ashx>

- 4.6. Pending the updates and amendments to the Development Agreement in this report RUSS are now in a position to proceed to sign their GLA Grant Agreement, Loan Facility Agreement with third party lenders and Building Contract ahead of a start on site within the next month.

5. Updates and amendments to the Development Agreement

- 5.1. The Development Agreement and lease for the Church Grove site need to change to be acceptable for third party lenders as security for the development while also protecting the Council's interest. It is proposed that the Development Agreement and lease are updated and amended to reflect the changes set out below.
- 5.2. The new GLA Grant Agreement no longer requires Lewisham Council to underwrite the grant reducing the financial risk to the Council in relation to the development.
- 5.3. RUSS and their third party lender require that the development can be used as security and this is currently established in the Development Agreement. From start on site to practical completion the whole development can be sold by the lender if its power of sale arises. However, for nine months it must try to secure a sale to a Registered Provider (RP) who must comply with the Development Agreement and the agreed tenure mix. The Council also has the right during this period to acquire the development for which it would pay whatever was owed under the loan. As the loan is paid against works carried out on site, this would mean that the Council was effectively able to acquire the development at cost following which it could complete it or dispose of it itself. The development would only be sold on the open market free of the restrictions on use (i.e. for private sale) if an RP or the Council did not want to step in. In this situation, any proceeds of sale after the lender had recovered its security and any grant repaid would be returned to the Council so no third party can profit from this.
- 5.4. However following practical completion of the development, the documentation currently provides that the Council's consent is required to any disposal of the lease and that the units can only be used for the tenures agreed. As RUSS will now have a long term debt with the security for this remaining in place following practical completion, the current restrictions mean that there is not adequate security for the third party lender as they need the ability to market the development free of restrictions on use (i.e. for private sale) and without needing the Council's consent to do this if their power of sale arises. They have therefore approached the Council requesting that the documentation be amended. Otherwise, the loan cannot be approved and the scheme will be unable to proceed.
- 5.5. It is therefore proposed that the existing arrangements are changed so that following practical completion:
- the lender can dispose of the lease free of restrictions on use without the Council's consent. However, the same mechanism as described in paragraph 5.3 would apply.
 - Alternatively and as a last resort the lender can sell individual units for private sale to recoup its debt. However the Council will have a first option to purchase these at market value. The 8 affordable rent properties would be sold last, with the Council having the option to purchase these at cost (i.e. what they have cost to build and finance) rather than market value.

- 5.6. This arrangement would ensure that if RUSS defaults following completion, the 8 affordable rent homes are only sold on the open market as a last resort and only if the Council does not wish to purchase them at cost.
- 5.9 While it is clear that these changes introduce a new risk that the Council could lose the Church Grove site to a third party on the open market if RUSS defaults and the Council declines to step in, it is clear that the lease in its current form is preventing the development from going ahead.
- 5.10 The negotiated changes set out above limit the risks associated with this occurring so far as possible, while still allowing a development that is community led and will deliver 36 affordable homes to progress.
- 5.11 On that basis officers recommend that Mayor and Cabinet approve the updated terms of the Church Grove Development Agreement and lease.
- 5.12 Going forwards if further updates or amendments are required to the Development Agreement or lease to facilitate the delivery of the social homes at Church Grove it is recommended that authority is delegated to the Executive Director for Housing, Regeneration and Public Realm in consultation with the Director of Law, Governance and Elections.

6. Financial implications

- 6.1 This report recommends that Mayor & Cabinet agree to the update and amendments to the Development Agreement in relation to Church Grove as set out in section 5 of this report. There are no cost implications arising from the amendments but there are some changes that affect the Council's financial risk and control.
- 6.2 The update highlights in para 5.2 that the Council would no longer need to underwrite the GLA grant and so this is a reduced financial risk and therefore an improvement to the Council's position.
- 6.3 In terms of the development agreement there is an amendment set out in para 5.5 regarding the ability of the lender providing the loan to RUSS to dispose of the development after it has been built. Currently the development agreement enables the Council to effectively prevent the lender from disposing of the development for private sale in the event of the lender taking possession of the development if RUSS fail to repay the loan. However this restriction prevents the development from being adequate security to the lender for the loan undertaken by RUSS and is likely to prevent the development going ahead if not removed so the Council is proposing to cede an additional right to the lender to dispose of the development free of restriction. Although this means the Council would no longer be able to prevent disposal it would be able to purchase the development at the cost of the amount of the outstanding loan. However if the development could not be sold as a whole to the Council or a Registered Provider (or other purchaser who will agree to be bound by the development agreement) then it could be sold on the open market. Alternatively, the lender could decide to sell individual properties on the open market with the 8 affordable rent properties being sold last. In that scenario the Council could purchase individual properties that would otherwise be private sale at market value and, the 8 affordable rent properties at cost. In either scenario, if the Council or a Registered Provider did not purchase the properties, then

the Council could effectively lose the social benefits it was receiving in return for the land it had contributed to the scheme.

7. Legal implications

- 7.1. The legal position and risks are outlined in the body of this report.
- 7.2. It is within the Council's powers to take this action. The Council has a wide general power of competence to do anything that individuals generally may do (Section 1 of the Localism Act 2011). The Council can rely on this power to act in an "enabling" manner in relation to the provision of new affordable housing. Further, the Council can undertake activities that are either economically, socially or environmentally beneficial for the authority and residents (Local Government Act 2000).
- 7.3. General decision making principles require consideration of all relevant matters, including financial impact and risk.
- 7.4. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.5. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 7.6. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 9.3 above.
- 7.7. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for members, bearing in mind the issues of relevance and proportionality. Members must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 7.8. The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without

compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

8. Equalities implications

- 8.1. Lewisham is a diverse borough made up of many different groups and individuals. There are many forms of discrimination affecting people's lives. Some groups of people generally experience more discrimination than others.
- 8.2. The emphasis on affordable housing in this project should help to address inequalities in access to housing.
- 8.3. Age, Disability: The physical aspect of self-build construction work may impact these groups. Officers expect RUSS to consider these groups as part of their self-build enabling works, how they can be included in the process, and what different roles they could play, as part of a self-build group.
- 8.4. Gender, Ethnicity, Religion, Sexual Orientation: It is not expected that the project will impact these groups disproportionately. The proposals from RUSS provided clarification about the make-up and operation of their community membership, and equalities considerations in place within their organisation.
- 8.5. RUSS carried out their own process of consultation with stakeholders, and a full programme of community consultation. This information is available as part of their planning application.

9. Climate change and environmental implications

- 9.1. There are no specific environmental implications arising from this report.

10. Crime and disorder implications

- 10.1. There are no specific crime and disorder implications arising from this report.

11. Health and wellbeing implications

- 11.1. There are no specific health and wellbeing implications arising from this report.

12. Report author and contact

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