

Epping Forest District Council

Chimes Nursery, Nazeing (EPF/0206/14)

Head of Terms for Affordable Housing Provisions - Section 106 Agreement

1. Provision of Affordable Housing Contribution in lieu of on-site affordable housing provision

1.1 The Applicant shall provide to Epping Forest District Council ("the Council") an Affordable Housing Contribution the sum of £1,000,000 (one million pounds), in two separate tranches of £500,000, that the Council shall only use to fund the provision of Affordable Housing elsewhere within the Epping Forest District.

1.2 No more than:

(a) 15 properties on the site may be occupied until the first tranche of £500,000 in respect of the Affordable Housing Contribution is paid to the Council; and

(b) 30 properties on the site may be occupied until the second tranche of £500,000 in respect of the Affordable Housing Contribution is paid to the Council.

1.3 In the event of either tranche of the Affordable Housing Contribution being received late (i.e. after occupation of the 15th or 30th property on the site respectively), the Affordable Housing Contribution shall be increased by an amount equivalent to the increase in the All Items Index of Retail Prices issued by the Office of National Statistics from the date of occupation of the 15th and/or 30th property until the date on which the relevant tranche of Affordable Housing Contribution is paid.

2. Provision of Affordable Rented Housing – Former Total Garage Site, Nazeing Road, Nazeing

2.1 Prior to the Implementation of Development at the Chimes Nursery site, the Applicant will purchase from Nazeing Parish Council the land at Nazeing Road, Nazeing comprising the site of the former Total Garage (plan to be attached), which has planning permission (EPF/0303/13) for the construction of 6 X 2 bedroom houses

2.2 Prior to Implementation of Development, the Applicant shall either:

(a) Enter into a signed Development Agreement with one of the Council's Preferred Housing Association Partners for the Applicant to construct the 6 X 2 bedroom houses and then sell the constructed properties to the selected Preferred Housing Association Partner, at a price agreed between the Applicant and the Preferred Housing Association Partner; or

(b) Sell the land to one of the Council's Preferred Housing Association Partners at a price agreed between the Applicant and the Preferred Housing Association Partner.

2.3 Alternatively, subject to the agreement of the Council, the Applicant may facilitate the sale of the former Total Garage site by Nazeing Parish Council to one of the Preferred Housing Association Partners direct.

2.4 The completed properties must not be used for any purpose other than Affordable Rented Housing.

2.5 In the event that none of the Preferred Housing Association Partners is willing to either:

(a) Enter into a Development Agreement for the purchase of 6 X 2 bedroom houses at a reasonable price; or

- (b) Purchase the land at a reasonable price;

the Applicant may either enter into a Development Agreement for the purchase of 6 X 2 bedroom houses or the sale of the land to another Registered Provider of Affordable Housing, subject to:

- (a) The agreement of the Council on the proposed Registered Provider of Affordable Housing to purchase the properties or land; and
- (b) All other requirements of the Section 106 Agreement being met.

- 2.6 The development at the former Total Garage site, whether by the Applicant, a Preferred Housing Association Partner or another Registered Provider of Social Housing, shall commence before the expiry of the current planning permission (EPF/0303/13).

3. Preferred Housing Association Partners

- 3.1 The Council's Preferred Housing Association Partners are currently:

- East Thames Housing Group
- Hastoe Housing Association
- Home Group
- Moat

4. Form of Affordable Rented Housing

- 4.1 All of the Affordable Housing shall be provided in the form of Affordable Rented Housing, at "affordable rent" rent levels in accordance with the Homes and Communities Agency's Affordable Rent Framework. Under the Framework, rent levels must be no more than 80% of the level of market rents prevailing in the local area (including service charges), and must not be above the Local Housing Allowance for the applicable Broad Rental Market Area.

5. Affordable Rented Housing Standards

- 5.1 The Affordable Housing must meet the Quality and Design Standards of the Homes and Communities Agency (HCA), as well as meeting all of the HCA's other funding requirements, unless the Preferred Housing Association Partner is able to obtain a waiver from the HCA for non-compliance with its Quality and Design Standards or other funding requirements.

6. Code for Sustainable Homes

- 6.1 The Affordable Housing must achieve at least Level 3 of the Code for Sustainable Homes.

7. Nominations Agreement

- 7.1 The Applicant and the subsequent Preferred Housing Association Partner (or other Registered Provider of Social Housing) must enter into a standard Deed of Nomination with the Council, setting out the nomination arrangements for the affordable housing to ensure that the affordable housing is let to housing applicants registered on the Council's District-wide Housing Register. The Deed shall be attached as a Schedule to the Section 106 Agreement.
- 7.2 Note that all of the Council's Preferred Housing Association Partners have already signed district-wide nominations agreements.

8. Mortgagee in Possession Clauses

- 8.1 The Council accepts that, in order for the Preferred Housing Association Partner to be able to obtain private funding, provision needs to be made within the Section 106 Agreement for mortgagees in possession to be released from the Affordable Housing requirements. However, the Council has standard wording to cover this requirement, which it expects to be used.
- 8.2 In summary, the Mortgagee in Possession clauses provide for the following:
- (a) If a mortgagee seeks to dispose of the Affordable Housing properties, it must give notice to the Council in writing.
 - (b) The mortgagee must first seek to dispose of the Affordable Housing to another Registered Provider on agreed terms.
 - (c) If the mortgagee is unable to dispose of the Affordable Housing at an agreed price within 3 months, the mortgagee must offer to transfer the Affordable Housing to either the Council, or the Council's nominated Registered Provider.
 - (d) The price of the Affordable Housing will be the lesser of the Open Market Value or the sum of money which will discharge the amount due and outstanding to the mortgagee under the terms of the mortgage, including all accrued interest and the costs and expenses incurred by the mortgagee.
 - (e) If the Council or its nominee and the mortgagee have not agreed the transfer price within 4 weeks, then the matter shall be referred to an expert (defined in the S106 Agreement).

Alan Hall / February 2015