

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 25

Brighton & Hove City Council

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|-------------------------|--|---------------------------------------|----------------------------|
| Subject: | Community Facilities – Revised Long Lease | | |
| Date of Meeting: | 21 July 2008 | | |
| Report of: | Assistant Director, Property & Design | | |
| Contact Officer: | Name: | Jessica Hamilton | Tel: 29-1461 |
| | E-mail: | Jessica.hamilton@brighton-hove.gov.uk | |
| Key Decision: | No | Forward Plan No. N/A | |
| Wards Affected: | St Peter's & North Laine | | |

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 A report was presented to Policy and Resources Committee on 23 February 2005 and it was resolved that the council acquire a long leasehold interest of 160 years for the Community Facilities to be built as part of the development of blocks E and F at the New England Quarter, as set out in the original s106 agreement for the development dated September 2003. In addition it was resolved that an underlease be granted to the Ethical Property Company plc for 125 years.
- 1.2 The developer of blocks E and F has now offered the council a lease for 999 years, as set out in a subsequent s106 agreement dated September 2007.

2. RECOMMENDATIONS:

- 2.1 That the council acquires a long leasehold interest of 999 years for the Community Facilities to be built as part of the development of blocks E and F at the New England Quarter.
- 2.2 That the council grants an underlease to the Ethical Property Company plc on terms to be agreed by officers under general delegations.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Outline planning permission was granted for the development of a brown field site adjacent to Brighton Station, known as New England Quarter. A s106 agreement dated 1 September 2003 required the developer to construct Community Facilities and to lease these to the council for 160 years. The

s106 agreement also set out the specification for the facilities, to be finished to shell and core with stairs, lift, soundproofing, toilets and main services.

- 3.2 The September 2003 s106 agreement required that the Community Facilities be used for such purposes as municipal uses and for use by charities, community groups, social enterprises and non-profit organisations where their principle objective or service is to aid or benefit the local community. The limitation on use to lapse after 30 years.
- 3.3 When negotiating the s106 agreement the council sought to obtain a community facility that would be of maximum benefit. The council discussed the proposal with the Development Trusts Association and in turn the Ethical Property Company plc (EPC) and concluded that for the developer to provide a building that was of a size useful to the council a larger building completed to a basic specification would be of greatest benefit. However it was acknowledged that in order for the building to be occupied, a further £500,000 approximately would be needed to complete its fit-out.
- 3.4 Prior to completion of the s106 agreement EPC agreed in principle to invest the additional monies required to complete the fit-out in return for managing the building and letting the Community Facilities to community groups in compliance with the s106 agreement.
- 3.5 In October 2007 full planning permission was granted for the development of Block E and F of the New England Quarter to the developer Crest Nicholson Bioregional Quintain LLP. A s106 agreement dated 27 September 2007 retained the obligation for the developer to construct a Community Facility to shell and core in accordance with the specification contained.
- 3.6 In a departure from the original September 2003 s106 agreement, the September 2007 s106 agreement required the developer to grant the council a lease of the Community Facilities for 999 years.
- 3.7 Within the headlease to the council there will be liabilities for the council to fulfil including payment of insurance and service charge contributions and maintenance of the community facilities. It is the intention to pass these liabilities onto EPC, or any subsequent undertenant, by way of an underlease. There is a small risk that if EPC were to go into liquidation it would be possible for them to disclaim the underlease, divesting themselves of any continuing liabilities and the council would be fully responsible for any obligation under the headlease until another undertenant was put in place. Given the length of the lease term proposed it is impossible to quantify the likely hood of this circumstance occurring in the longer term. EPC's financial record to date is sound.

4. CONSULTATION

4.1 The Ethical Property Company has been consulted throughout the negotiations for the September 2007 s106 agreement and all subsequent lease negotiations.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

The terms of the S106 dictate that the lease be granted to the Council for a period of 999 years however the development must be used as community facilities for 30 years. The granting of the underlease to the Ethical Property Company (EPC) ensures that the fit-out cost of £500,000 will be met. Any ongoing running costs associated with blocks E and F of the New England Quarter will be passed on to either EPC or a new undertenant as part of the proposed underlease. If circumstances arose whereby there was not an undertenant in place the council would be responsible for the liabilities set out in the lease from the developer.

Finance Officer consulted: Rob Allen

Date: 11 June 2008

Legal Implications:

S.120 of the Local Government Act 1972 enables the council to acquire this lease.

Lawyers consulted: Anna MacKenzie

Date: 11 June 2008

Equalities Implications:

An Equalities Impact Assessment is not considered relevant for the purpose of this report.

Sustainability Implications:

The scheme includes the 'One Planet Living' Concept and is pioneering for its approach on Sustainable Development enabling people to live within a sustainable ecological footprint by taking responsibility for the consumption of resources. The scheme is the first of its kind in the UK. The development includes energy efficiency measures and on site renewable technologies, which aims to reduce CO2 emissions by 76%.

Crime & Disorder Implications:

5.5 There are no implications.

Risk and Opportunity Management Implications:

- 5.6 If the council were unable to secure an undertenant, it would be responsible for the liabilities set out in the lease from the developer. The ability to obtain an undertenant is limited whilst the permitted user is limited to the provision of a community facility for the first 30 years. In these circumstances the council would be required to manage the community facilities.

Corporate / Citywide Implications:

- 5.7 The longer lease gives the council greater control over the future use of the community facilities which will provide accommodation for local charities and organisations supporting the local community.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 A 160 year lease is a depreciating asset and its value will decrease over its lifetime. It will not offer the council the same degree of control in the long-term.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 A 999 year lease is a more valuable asset to the council, a virtual freehold, and the depreciation of its value is de minimus. By securing a much longer leasehold interest in the site the council is acting consistently by retaining a maximum interest in its property holdings.
- 7.2 Such an interest gives the council greater control over the future use of the Community Facility for the length of its interest, allowing the council to secure the use of the building as a Community Facility or indeed apply to the freeholder for a change of use after 30 years.
- 7.3 In addition, by virtue of the lease the council will have a degree of control over the freeholder's use of the site including any future redevelopment.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. Policy and Resources Committee Report, Brighton Station Community Facilities, presented 23 February 2005