

# Crawley Borough Council



## Report to Cabinet 10 September 2014

### Land at Ely Close, Tilgate, Crawley

Report of the Head of Legal and Democratic Services  
and the Head of Housing Strategic Services  
**Report No. LDS/086**

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#### 1. Purpose

- 1.1 To re-appraise the decision of the Cabinet to dispose of land at Ely Close, Tilgate, Crawley. (Minute 42 of The Cabinet 14 October 2009 refers).
- 1.2 The decision to dispose of a number of identified sites for affordable housing was made by Cabinet on 14 October 2009. These sites included land at Ely Close, Tilgate. This decision also included approval for delegated authority be given to the Head of Property Services in consultation with the Head of Strategic Housing and Planning Services, the Head of Finance and Procurement together with the Chair of the Cabinet and Portfolio Holder for Housing:-
  - (i) to appraise any tenders received and
  - (ii) and to dispose of those sites to the successful RSLs based on the qualitative and quantitative aspects of their tenders

#### 2. Recommendations

That the Cabinet considers the joint report from the Head of Legal and Democratic Services and the Head of Housing Strategic Services.

#### 3. Background

- 3.1 The decision to dispose of a number of identified sites for affordable housing was made by Cabinet on 14 October 2009 Report to Cabinet (PSD/93, SH&PS/03 and Minute 42 refers). Two of these sites (among others) were identified as category 'C' sites, that is sites short-listed through a series of meetings with the Asset Management and Capital Programme Group based on their perceived deliverability, which would ultimately be determined through the planning process namely Lark Rise in Langley Green and Ely Close in Tilgate. The report to Cabinet identified 10 potential units which might be constructed on Lark Rise and 23 units on Ely Close.
- 3.2 Cabinet resolved:
  - a) That the whole or selective disposal of the sites listed in the report be approved.
  - b) That the approved sites be marketed to the Council's/preferred Registered Social Landlords (RSLs) Partners, as detailed in the report.

- c) That delegated authority be given to the Head of Property Services in Consultation with the Head of Strategic Housing and Planning Services, the Head of Finance and Procurement, together with the Chair of the Cabinet and Portfolio Holder for Housing:-
  - (i) to appraise any tenders received and
  - (ii) dispose of those sites to the successful RSLs based on the qualitative and quantitative aspects of their tenders, and
- d) That Ward Members be involved at the earliest possible stage, and they be kept updated as the proposals were progressed.

#### **4. Information & Analysis Supporting Recommendation**

- 4.1 A plan showing land at Ely Close is annexed as Appendix 1 to this report.
- 4.2 Moat Homes Limited successfully tendered for the sites at Ely Close and Lark Rise and in bringing the site at Ely Close forward, public consultation was carried out in the autumn of 2011 which led to a redesign of the proposed scheme at Ely Close.
- 4.3 This matter was further considered by Cabinet on 21 March 2012 as a result of a petition from local residents opposing the proposed development and calling on the Cabinet to reverse the decision to offer the open space at Ely Close for housing development and to retain the site as amenity space for the continued enjoyment of the local community. Cabinet determined that while acknowledging the wishes of residents to preserve this land as open space the development should proceed in consideration of the demand for affordable housing and limited land supply to meet this.
- 4.4 A planning application from Moat was considered by the Development Control Committee on 25 March 2013. Planning Application 2013/0019/FUL was for demolition of a single storey garage block and construction of 18 new residential units, associated infrastructure and landscaping works. Officers had recommended the application for approval, however the Development Control Committee refused planning permission on the grounds that the proposed development would result in the loss of open space which makes a positive contribution to the character and amenity of its surroundings. Moat appealed to the decision and at the subsequent Appeal, the Planning Inspector on 17 December 2013 allowed the Appeal and planning permission was granted for the demolition of a single storey garage block and construction of 18 new residential units, and associated infrastructure and landscaping works at Ely Close. In reaching the decision to allow the appeal the Planning Inspector stated:

*“The provision of affordable housing in accordance with a defined strategy is a matter to which I attribute significant weight in accordance with the advice in the National Planning Policy Framework in terms of providing a supply of housing to meet the needs of present and future generations. In my view, the benefit in this respect accruing to the wider community outweighs the inconvenience to some local residents in terms of increased distance to quality open space.”*
- 4.5 Further, the Inspector did find that the land was highly valued by local residents, particularly in terms of convenience to those whose homes adjoin the land and have direct access to the land from their gardens. He acknowledged there was a question in terms of the extent to which the open space was used, however he said that he was persuaded by the body of representations received that the land had been well used over

time, particularly in terms of providing safe play space for children and he acknowledged the importance of the land to local residents.

- 4.6 An application was submitted under the Localism Act 2011 to list the land as an Asset of Community Value on 24 January 2014 by “The Ely Close Action Group” in respect of “Land situated to the rear of houses in Ely Close, Oxford Road, Winchester Road and Worcester Road, Tilgate, Crawley”. The application was accepted for listing on 20 March 2014.
- 4.7 On 2 April 2014 the Council wrote to “the Ely Close Action Group” stating that notice had been given by the Council as Landowner on 1<sup>st</sup> April 2014 of its intention to dispose of the land as listed. That date of 1<sup>st</sup> April 2014 triggers the moratorium periods set out in the Localism Act.
- 4.8 The first interim moratorium period in relation to the disposal of the land ended on 13 May 2014. Prior to the expiry of that period a “Community Interest Group” as defined in the regulations may submit in writing to the Council a request for the Group to be treated as a potential bidder of the land. On 15th April 2014 Ely Close Action Limited confirmed in writing that they wished to be considered as a potential bidder. The full moratorium period of 6 months became effective, this period will expire on 1 October 2014.
- 4.9 The Community Interest Group must submit a bid to purchase the land before the expiry of the full moratorium period on 1<sup>st</sup> October 2014. Accordingly, the Council may not sell the land before 1 October 2014, unless to Ely Close Action Limited. In the event of such a bid being received before the end of the full moratorium period then the Council would be bound to consider that bid.
- 4.10 In the event of the Council deciding not to sell to the land to Ely Close Action Group Limited, then the Council have 12 months in which they may sell to anyone or any organisation they so chose at any price for the remainder of the protected period (1 October 2015) without any further moratorium applying.

## 5. Implications

### Legal, Financial and other Considerations

- 5.1 It is necessary to set out the contractual position in respect of the disposal of the land at Lark Rise, Langley Green to Moat as this is linked to the disposal of land at Ely Close. The development at Lark Rise is currently being implemented with Phase 1 due to be completed by December 2014 and Phase 2 to be completed by June 2015.
- 5.2 Contracts were exchanged between Crawley Borough Council and Moat Homes Limited for the sale of Lark Rise on 20 May 2013 at a price of £300,000. Clause 5.2 of the Contract provides that the purchase price of £300,000 would be paid by the Buyer (Moat) less the reasonable and proper planning application costs of the Buyer in connection with the **Ely Close Project** such sum or sums not to exceed the estimated costs in relation to each element of the Ely Close Project as set out in Schedule 3 (£100,218) of the Contract. In addition, because the Ely Close Planning Application went to Appeal these costs should be added, these Appeal costs are £11,000 making a total figure of £111,218.
- 5.3 Accordingly, should the disposal of Ely Close not proceed; the purchase price of Lark Rise payable to CBC will be £300,000 less £111,218, reducing the receipt to the Council to **£188,782**.

- 5.4 In the event that the disposal of land at Ely Close does proceed, the Council will receive **£550,000** this being £300,000 for Lark Rise and (once contracts have been exchanged for Ely Close) and £250,000 for Ely Close with no deduction for Moat's costs.
- 5.5 The land is subject to a Section 106 Planning Obligation, so in the event of the Planning Permission being implemented and prior to the first occupation of the development the Council would receive £12,953 as an open space contribution.
- 5.6 Although contracts for the disposal of the land at Ely Close have been drafted, the Council has not exchanged contracts with Moat.
- 5.7 As the land is public open space, the Council cannot sell the land unless it gives formal notice of its intention to dispose of the land through advertisement in the press. Any person wishing to object to the disposal of the land would be able to write to the Council setting out their objections. The Council would be required to consider those objections.
- 5.8 The Council is bound by the terms of a contractual agreement with Moat, legal and financial implications are set out in this report which the Cabinet should have regard to, should the cabinet decide not to dispose of the land at Ely Close. Challenge by way of Judicial Review is considered less likely than challenge by way of referral to the Local Government Ombudsman but both remain risks to some degree.
- 5.9 The Cabinet when making decisions must meet its public law duties and give reasons for its decisions, the Cabinet must consider all relevant information, disregard irrelevant information, act in accordance with statutory requirements and make its decision in a fair and transparent manner.
- 5.10 Moat is one of the Council's preferred development partners and has been proactive in working with the Council to unblock barriers and bring forward development. Withdrawal of the land from sale at this stage must be expected to impact this relationship and the confidence that Moat and other preferred partners will place in working with the Council going forward. Enabling development of affordable housing through Housing Associations forms a significant strand of the Council's delivery programme.
- 5.11 The demand for housing has not diminished since the original decision to bring forward this land for development was taken. Due to the shortage of developable land the Council is proposing a land supply led figure for housing delivery within the draft Local Plan. This falls short of demographic need which means that Crawley's housing need will have to be met in part across the wider North West Sussex market area. The Council will inevitably be challenged by both neighbouring authorities, developers and the Planning Inspector to evidence that it has maximised opportunities to meet housing need. The Inspector's conclusions in allowing the planning appeal regarding the weight placed on affordable housing delivery and benefit accruing to the wider community of using the site for this purpose leave the Council in a vulnerable position in seeking to defend a decision not to take the site forward should this be challenged. Although the action taken by local residents in forming a community group to achieve listing of the land as an asset of community value reinforces the value they place on retaining this land as open space it seems clear that the expectation of the Planning Inspectorate would be for the Council still to take forward the site for housing development.
- 5.12 The development of open space inevitably carries a tension between the need for housing and the value local residents may place on open space. It must be expected that a change of decision in relation to the land at Ely Close which, in the absence of any planning consideration, is based on pressure from local residents will inevitably set a

precedent for other open space sites. |

### Options

- 5.13 In the event that Ely Close Action Group Limited submit a bid to purchase the land before 1 October 2014 this must be considered by the Cabinet. If they do not, then in accordance with the Cabinet decision, officers would complete the land sale to Moat for the development of the site. Should a different course of action be proposed, then Cabinet should consider their decision in the light of the implications set out in this report.
- 5.14 In the event of the Council entering into a binding contract with Moat Homes Limited, the Council would achieve 18 affordable housing units, a capital receipt of £250,000 as well as the full price for Lark Rise of £300,000. However, to proceed on this basis an open space advertisement will be necessary and a further report would need to be considered by the Cabinet addressing any objections and appropriating the land for planning purposes.
- 5.15 If the Cabinet decide not to dispose of the land to Moat Homes Limited, the Council would lose the affordable housing units and nomination rights associated with these as well as a £250,000 capital receipt for Ely Close and a deduction £111,218 from the capital receipt for Lark Rise and the public open space contribution of £12,953. Moat Homes Limited would have no claim against the Council in the event of the Council withdrawing from the Ely Close contract at this late stage as contracts have not been exchanged. Withdrawal of the land from sale at this stage must be expected to impact on the Council's relationship with Moat and the confidence that they and other preferred partners will place in working with the Council going forward. Enabling development of affordable housing through Housing Associations forms a significant strand of the Council's delivery programme.

## **6. Background Papers**

- 6.1 Report to Cabinet (PSD/93, SH&PS/03) and Minutes of Meeting 14 October 2009 (Minute 42) – Proposed Disposal of Identified Housing Sites for Affordable Housing.

Report to Cabinet (SHAP 24) and Minutes of meeting 21 March 2012 (Minute 85). Ely Close Petition. Proposed Disposal of Site for Affordable Housing.

Inspector's Decision letter dated 17 December 2013 (Ref PP/Q3820/A/13/2201381) relating to Planning Application CR/2013/0019/FUL. Land at Ely Close, Tilgate Crawley.

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APPENDIX I

Map showing location and boundaries of Asset

