

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

*PART 1 – PUBLIC DOCUMENT

Any interest to declare/ or conflict and any dispensation granted [*if applicable*]: *None*

SERVICE DIRECTORATE: *RESOURCES*

1. DECISION TAKEN

Agreement to suspend collection of £63,944.14 clawback in respect of the disposal of Property at 2, Orchard Way, Breachwood Green, Hertfordshire SG4 8NT to allow settle the opportunity to comply with the terms of an exemption namely applying the proceeds towards the provision of Social Housing or Community Benefit in the District of North Hertfordshire.

2. DECISION TAKER

Ian Couper, Service Director: Resources

3. DATE DECISION TAKEN:

19/11/2024

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

The decision is in accordance with the protocol entered into between North Hertfordshire District Council (NHDC) and North Hertfordshire Homes (NHH), now known as settle, in respect of a proposed disposal by settle of an asset transferred under the Stock Transfer. Therefore, no other alternative options are applicable.

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

Settle have been consulted regarding the level of the potential clawback payment and the details of the social housing scheme to which the funds will be applied. There is no obligation on the Council 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 NHH changed its name to settle in May 2018.

- 8.2 Settle have submitted a request to agree an exemption to clawback in respect of Property at 2, Orchard Way, Breachwood Green, Hertfordshire SG4 8NT for the proceeds from the disposal to be used for the provision of Social Housing or Community Benefit in the District of North Hertfordshire. Settle are relying on exemption *xi* in the deed of covenant dated 31 March 2003 which imposes the obligation to pay clawback.
- 8.3 The proposed project to which the proceeds will be applied is the John Barker Place regeneration project. Whilst it is still considered appropriate to suspend payment of the clawback for three years to allow settle the opportunity to invest the proceeds into Social Housing, The Council cannot at this stage agree the specific details of the Social Housing provision as until the precise proposals for the later phases of the John Barker Place regeneration project is known the clawback cannot be committed to those projects. Once the detail of the Social Housing to be provided by the John Barker place regeneration is known, together with the financial modelling, then the Council will determine whether this clawback should be allocated to that scheme or an alternative scheme.
- 8.4 Clawback is 25% of the greater of the Disposal Gain or the Development Gain. In this transaction, there is no Development Gain to consider, so the only relevant calculation is the Disposal Gain. The clawback calculation for the property has been agreed between the parties as follows:

| Property | Disposal Gain | Clawback @ 25% |
|---|----------------------|-----------------------|
| Property at 2, Orchard Way, Breachwood Green, Hertfordshire SG4 8NT | £255,776.55 | £63,944.14 |

9. LEGAL IMPLICATIONS

- 9.1 The Service Director: Resources has delegated authority for 'Approvals for any overage, claw back or similar arrangement pursuant to the Stock Transfer Agreement'.
- 9.2 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 the Council 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 or Community Benefit (as defined by the agreement) schemes within 3 years. The parties have entered into a protocol which governs how this exemption will operate in practice. The protocol permits the Council to suspend collection of clawback to allow settle the opportunity to comply with the terms of the exemption. As long as the request is reasonable then it should not be refused. So, this does not provide an opportunity for the Council to obtain additional funding.

10. FINANCIAL IMPLICATIONS

- 10.1 A significant amount of clawback has been suspended for use on the John Barker Place scheme. This clawback would take the total to £4,190,183.77. It has also been agreed that £1,760,000 of previously suspended clawback will be used on phases 1 and 2 of the John Barker Place scheme. Within its capital programme, the Council has also allocated £1.096 million towards this scheme. The overall value of the Social Housing within the scheme will need to be reviewed when a final proposal is in place. This will determine whether it is appropriate to confirm the use of the suspended clawback and also the use of the Council's own funding.

11. RISK IMPLICATIONS

11.1 No security is being sought to ensure payment of the clawback in the event that the social housing scheme is not delivered. Therefore, there is a risk that settle will not have the funds to pay the clawback if they are unable to deliver the scheme. However this is considered unlikely.

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 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 to this decision.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no HR implications arising from this decision.

16. BACKGROUND PAPERS

16.1 *None.*

17. APPENDICES

17.1 None.

NOTIFICATION DATE

22/11/2024

Signature of Executive Member ConsultedN/a.....

Date

Signature of Decision Taker 

Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS