

Report of the Head of Planning & Local Development

High Street/Jacksons Lane Site

1 Purpose of report

This report provides an update on the High Street/Jacksons Lane site and seeks approval to enter into an agreement with Keepmoat.

2 Executive summary

Following the decision at Council in July 2015, to continue with the current Keepmoat scheme, but exclude the Queens Hall, Drill Hall, and proposed surface level car park from the land to be sold, officers have been working with Keepmoat to identify acceptable terms. This report seeks approval to enter into a sales agreement with Keepmoat on the terms outlined in appendix 2.

3 Appendices

Appendix 1 – High Street/Jacksons Lane land transfer plan

Appendix 2 – Sale agreement summary

Appendix 3 – Confidential Deloitte’s report of the Keepmoat proposal (E3)

4 Proposed action:

RECOMMENDATION

- 4.1 It is proposed that members RESOLVE to enter into a sale agreement on the terms identified in appendix 2 with Keepmoat.**

5 Background

- 5.1 The High Street/Jackson Lane site occupies a strategically important location on the edge of the town centre. The site to be sold to Keepmoat, which excludes the Queens Hall, Drill Hall, and proposed surface level car park from the land to be sold, is shown in appendix 1.
- 5.2 In April 2006 the council adopted the High Street/Jacksons Lane development brief to provide a clear development policy framework for the future redevelopment of the site and regeneration of the area.
- 5.3 Policy PS3 of the Town Centre Area Action Plan (TCAAP) identifies that the

site should be comprehensively redeveloped for mixed use development to include;

- a) Approximately 220 dwellings comprising a mix of tenures and housing types
- b) A new landmark campus for Tresham Institute
- c) A hotel comprising 50 rooms and partially involving the conversion of the Grade II Queens Hall on the High Street
- d) A relatively small quantum of shops and services, leisure and/or restaurant/café/bar and office space integrated into the mixed use scheme to enhance viability
- e) Potentially an Innovation Centre providing incubation space for small businesses
- f) Retention of approximately 200 parking spaces for public use
- g) Cycle parking
- h) A landscapes pedestrian and cycle network and two landscapes areas

5.4 The land uses suggested by the TCAAP have evolved over time to take into account changes in circumstances. This includes:

- (a) Tresham now propose to redevelop their existing site and there is, no longer a need for a new landmark campus to be included within this site.
- (b) The innovation centre in Wellingborough located at Tresham has closed and there is no current demand for this use.
- (c) The hotel market has been tested and there is no interest from operators to develop a 50 bed hotel in Wellingborough.

5.5 Although the site was primarily in use as a council owned surface car park there were other land ownerships which at that time prevented a comprehensive redevelopment of the site. The council therefore agreed to pursue a Compulsory Purchase Order to assemble the site.

5.6 The council undertook a procurement process via the Homes and Communities Agency (HCA) Delivery Partner Panel. The outcome of this was the selection of Keepmoat as the council's 'preferred developer' in March 2012. Following the agreement of the heads of terms at Resources Committee on 11 July 2012, officers and the council's professional legal and commercial advisors (Pinsent Mason and Deloitte) have been attempting to negotiate a development agreement. This process has been protracted as a result of the scheme being subject to a number of design iterations, which have arisen as a result of both planning feedback and evolving market conditions.

5.7 A planning application submitted by Keepmoat on 1 October 2012 to redevelop the site by the erection of 133 dwellings, a multi-storey car park and retail use (see WP/2012/0445/FM) was refused on 3 April 2013 due to: the detrimental impact of the proposed development, particularly the multi-storey car park, on the character and setting of the Town Centre Conservation Area and adjacent listed buildings; the detrimental impact on the amenities of neighbouring residents; and highway issues. The Queens Hall and Drill Hall were excluded from this application. It should be noted that

there was a delay in the determination of this application partly due to an expression of interest in the site from a retail development company which did not materialise further.

- 5.8 A revised planning application was received on 14 March 2014 for 109 dwellings, 39 affordable apartments within an independent living facility (ILF) built on the site of the demolished Drill Hall, a new public plaza adjacent to High Street, and at least 170 public surface level parking spaces (see WP/14/00175/FUL). This application remains undetermined to date, with planning and heritage uncertainties in relation to the Drill Hall being one of the principal reasons for this inertia.
- 5.9 In order to try and progress matters on the site, the Council meeting on 21 July 2015 considered the following four options.
- Option A: Progress with the current Keepmoat scheme and finalise the development agreement.
- Option B: Progress with the current Keepmoat scheme but exclude the Queens Hall, Drill Hall and proposed surface level public car park from the area of land to be sold to Keepmoat in order to facilitate a separate larger leisure/retail development.
- Option C: Reprocure the site.
- Option D: Offer the land for sale on the open market.
- 5.10 Council resolved that Option B be progressed. This was on the basis that there was a desire to dispose of the majority of the site to Keepmoat for the purposes of bringing forward a mixed tenure residential development.
- 5.11 The retained land, comprising the area around the Drill Hall and Queen's Hall, will be considered for other uses and a report brought back to Committee at the appropriate time.

6 Discussion

- 6.1 Following the Council meeting on 21 July 2015, officers took further advice from its legal advisors Pinsent Masons who have suggested that a sale agreement is the best agreement to enter into with Keepmoat. Therefore attached in Appendix 2 is a summary of the terms of a sales agreement that officers are seeking approval to enter into.
- 6.2 Keepmoat has developed a revised scheme design which officers have commented on and which Keepmoat will shortly be formally submitted through the planning process.
- 6.3 In order to enable matters to proceed, the proposed sale agreement includes a provision that an open book appraisal will be prepared to determine the price before completion, subject to a provision that the price payable must be

a minimum of £2 million.

- 6.4 It is important to note that the land price has not yet been agreed and this will only be determined once planning permission has been granted for the revised scheme. The sale agreement demonstrates that the minimum price stipulated by Council in July 2015 can be achieved and the agreement is therefore conditional upon a number of matters including achieving best consideration.
- 6.5 The sale agreement also includes an overage mechanism which requires Keepmoat to share 45% of any sales proceeds realised above the sales figures assumed within the baseline appraisal, with adjustments made for build cost inflation.
- 6.6 Further information on the proposed commercial terms is set out within Appendix 3.
- 6.7 A condition has been included within the sale agreement which makes the disposal subject to the Council satisfying its obligations under S123 of the Local Government Act 1972.

7 Legal powers

S123 of the Local Government Act 1972 and S233 of the Town and Country Planning Act 1990.

8 Financial and value for money implications

- 8.1 The costs of the work to finalise the sale agreement are covered under existing budgets.
- 8.2 Appendix 3 contains financial information on the current scheme and is not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A Of the Local Government Act 1972 due to the confidential and sensitive financial information it contains.

9 Risk analysis

- 9.1 The highest sales price for the land is likely to be achieved by inviting competitive bids however, this risk needs to be considered against the time and financial cost saving advantages associated with not remarketing the site. An early commencement of development has been an important consideration for members. The council have tried to mitigate against this risk by stipulating a minimum price for the land and the agreement is conditional on the council being satisfied that best consideration has been achieved.
- 9.2 There is a risk that if the land is retained by the council there will be a delay in housing delivery from this site which could impact on our 5 year housing land position as a new purchaser is sought or a new procurement process entered into. If the market fails again then the minimum price may not be achieved at

some future date.

10 Implications for resources

There are no specific implications for staffing resources flowing from this report.

11 Implications for stronger and safer communities

The redevelopment of this site will provide a healthier, safer environment and bring a neglected area of the town back into use as a vibrant community.

12 Implications for equalities

An equalities impact assessment has been undertaken for the High Street/Jacksons Lane site and will be reviewed once the agreement terms have been agreed.

13 Author and contact officer

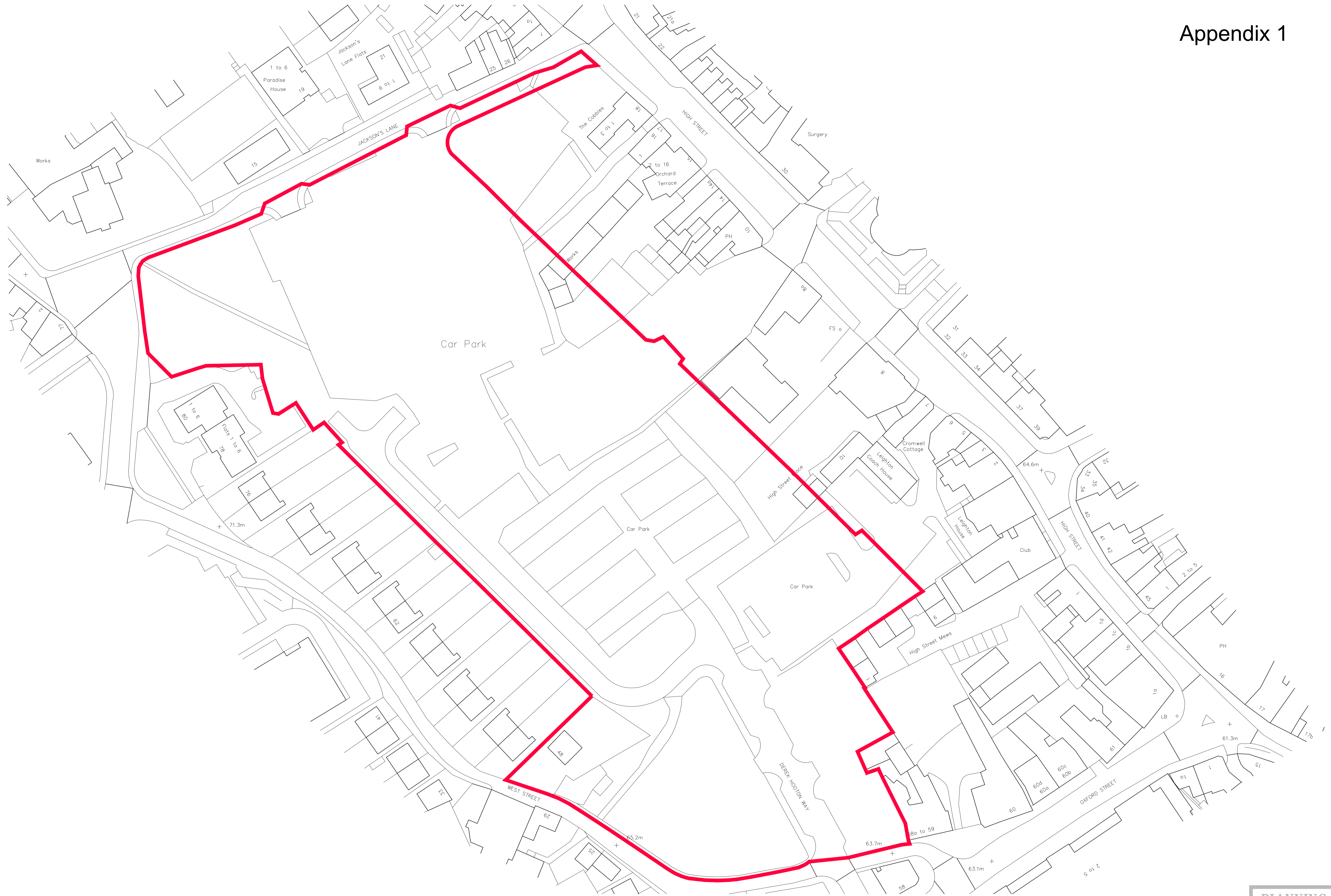
Julie Thomas, Head of Planning & Local Development.

14 Consultees



John Campbell, Chief Executive
Liz Elliott, Head of Finance
Bridget Lawrence, Head of Resources
Victoria Phillipson, Principal Planning Policy & Regeneration Manager
Paul Burnett, Principal Property & Facilities Manager
Jennifer Bell, Project Co-ordinator

15 Background papers

High Street/Jacksons Lane site development agreement
Procurement process documentation and tender submission
The High Street/Jacksons Lane development brief.



PLANNING

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						Scale 1:500@A1	Dated 01.04.16	Job No. 52608	

Summary Report: Conditional Sale Agreement relating to land at High Street, Wellingborough

6 June 2016

1. PARTIES AND DOCUMENTS

- 1.1 The Agreement for Sale ("**Agreement**"), Buy Back Option ("**Option**") and Transfer are made between the Borough Council of Wellingborough (the "**Council**") and Keepmoat Homes Limited ("**Keepmoat**").

2. AGREEMENT

2.1 Conditionality

2.1.1 The Agreement is conditional upon satisfaction of the following Conditions:

- (a) the grant of a Satisfactory Planning Permission which is immune from challenge;
- (b) the Derek Hooton Way Condition. This means Keepmoat being satisfied that no works are required to Derek Hooton Way prior to its adoption or the parties agreeing (or the expert determining) a cap to the level of costs required to bring it up to adoptable standard;
- (c) the Best Consideration Condition. This means the Council having received a Best Consideration Report from its surveyors (currently Deloitte) stating that the Purchase Price represents the best price reasonably obtainable pursuant to s123 Local Government Act 1972;
- (d) the residual land value calculation showing a land value of at least £2,000,000 or Keepmoat agreeing to purchase the Property for £2,000,000 if the land value shown is less;
- (e) Keepmoat putting in place defective title indemnity insurance.

2.1.2 Keepmoat must use reasonable endeavours to obtain a Satisfactory Planning Permission by the Condition Date (12 months following the date of the Agreement subject to extension as detailed below).

2.1.3 If the Conditions have not been satisfied or waived by the Condition Date then either party can terminate the Agreement and the Council must return the Deposit to Keepmoat.

2.2 Condition Satisfaction Date

If on the Condition Date there is a planning delay (due to the application not yet being determined, it not yet being immune from challenge or there being an appeal or judicial

proceedings), or any of the other Conditions have not been satisfied then the Condition Date can be extended by a further 3 months.

2.3 **Satisfactory Planning Permission**

- 2.3.1 Keepmoat must seek the Council's approval to all plans needed to form the planning application (to the extent that they are not attached to the Contract. Keepmoat must consult with the Council and obtain its approval (not to be unreasonably withheld or delayed) to amendments to the planning application.
- 2.3.2 A Satisfactory Planning Permission is one that does not contain any onerous conditions and for which any planning obligation required does not contain any onerous conditions. The onerous conditions are restricted to a specific list of matters which, in short, could make the permission more costly or difficult to implement or move it away from the permission applied for.
- 2.3.3 Keepmoat is not able to vary or withdraw the application without the Council's approval.
- 2.3.4 In addition to the process outlined above, Keepmoat has to keep the Council updated with progress, provide copies of relevant papers and provide the Council with reasonable prior notice of any meetings with the local planning authority so as to allow them to attend.
- 2.3.5 If there is a planning refusal then the parties will consult to agree whether an appeal should be made. If the Parties cannot agree Counsel's opinion will be sought and if Counsel advises that the chance of success is greater than 50% then Keepmoat must appeal.
- 2.3.6 Keepmoat must deliver the Council a copy of any planning decision within 5 working days and, if it is a permission, within 15 working days notify the Council in writing whether it considers the permission to be satisfactory. If Keepmoat considers that the Planning Permission is not a Satisfactory Planning Permission it must provide details (with reasons) of which conditions are Onerous Conditions. The Council must within 10 Working Days of receipt of the notice confirm in writing whether or not it agrees with Keepmoat that there are any Onerous Condition(s). If the Council disagrees then the matter may be referred to an Expert. If Keepmoat fails to serve notice then that will be treated as acceptance that the permission is Satisfactory.

2.4 **Derek Hooton Way**

Before satisfaction of the Planning Condition Keepmoat must carry out all searches and investigations as are necessary to determine what remedial works (if any) will be required to Derek Hooton Way to bring it up to adoptable standard. If Keepmoat believes that remedial works will be required it must provide the Council with such evidence and justification as it reasonably requires. The parties must use reasonable endeavours to agree a cap to the level of costs so that the cap can be inserted into the residual land value calculation template prior to calculation of the purchase price.

2.5 **Best Consideration Report**

As soon as is reasonably practicable following the grant of a Satisfactory Planning Permission, and, following the parties agreeing or determining the Purchase Price, the Council must instruct its surveyors to produce a Best Consideration Report. Within 15 working days of the Best Consideration Report being issued the Council must advise Keepmoat whether the Best Consideration Condition has been satisfied.

2.6 **Purchase Price**

- 2.6.1 Within 10 Working Days of the Satisfactory Planning Permission Keepmoat must serve on the Council an Anticipated Purchase Price Notice with a completed Residual Land

Value Template (in the outline form attached to the Agreement) showing the calculations. The Purchase Price cannot be less than £2,000,000.

2.6.2 Keepmoat must act reasonably and in good faith in calculating the Anticipated Purchase Price and must give the Council full supporting documentation in relation to such calculation and warrants the accuracy of those documents.

2.6.3 The parties will use their reasonable endeavours to agree the Anticipated Purchase Price within 10 Working Days of the submission of the Anticipated Purchase Price Notice to the Council.

2.6.4 In the event that the Council disputes the Anticipated Purchase Price or any matters contained in the Anticipated Purchase Price Notice, any dispute between the parties shall be settled by reference to an Expert.

2.7 **Defective Title Insurance**

Immediately following satisfaction of the Best Value Condition Keepmoat must put the Defective Title Indemnity Insurance in place.

2.8 **Deposit, Purchase Price and Completion**

2.8.1 A deposit of £200,000 will be paid to the Council on the date of the Agreement to be held by the council's solicitor.

2.8.2 The Purchase Price will be paid on completion of the transfer.

2.8.3 Completion takes place ten working days after the last Condition is satisfied.

2.9 **Environmental**

The agreement contains an acknowledgment that the terms of the deal reflect the state and condition of the Property, the possible need to carry out remedial action and that Keepmoat will accept all liability in relation to any hazardous substances at the Property and any remedial work necessary.

2.10 **Overage**

2.10.1 Overage is calculated on the basis of the amount by which the total market unit sale proceeds at the Property exceed the threshold price set out in the Agreement (after allowing for sale incentives and increases in build cost inflation).

2.10.2 Overage is first payable on the earlier of the date of the last market sale and 2 and a half years after the works commencement date. It is payable again on the date 5 years following the works commencement date.

2.10.3 Keepmoat must give the Council details of all sales at the Property on a 3 monthly basis following the first sale and there are restrictions relating to disposals so they must be on arms length bona fide terms and if to a group company must be at open market value.

3. **LICENCE/LEASE OF SITE COMPOUND**

The Council will grant Keepmoat a short term lease or licence of part of the Council's remaining land (the exact area is yet to be finalised) which Keepmoat will use as a site compound during the carrying out of the works.

4. **BUY BACK OPTION**

4.1 On Completion of the transfer Keepmoat grants the Council a Buy Back Option.

- 4.2 The Council may serve a trigger notice on Keepmoat if, by the date 12 months following the date of the Option, Keepmoat have not physically commenced material works for the construction of roads, sewers or services at the Property.
- 4.3 The Option Period starts on the date a trigger notice is served and expires 12 months after the date of service of such notice. The Council may exercise the Option during such period by serving written notice on Keepmoat to that effect. Completion takes place 10 working days after the date on which the Council serves an option notice on Keepmoat.
- 4.4 The payment due on completion will be the Purchase Price that Keepmoat paid to the Council on completion of the transfer less the Council's costs of implementing the Option.

5. TRANSFER

5.1 Keepmoat are granted the following rights:

- 5.1.1 a right to the passage of services through the Council's retained land (subject to not causing any damage) together with a right of entry onto the retained land (after reasonable notice) to inspect, clean, repair, maintain, renew and connect into such services making good all damage caused;
- 5.1.2 a right of way over any unadopted access roads on the Council's retained land as are necessary to get to and from the Property and the adopted highway;
- 5.1.3 access (after reasonable notice) onto such of the Council's retained land as is unbuilt upon to carry out any necessary works of repair and maintenance to buildings on the Property.

The persons exercising such rights must cause as little damage and inconvenience as is consistent with the proper exercise of the rights and make good any damage caused.

- 5.1.4 support and protection from the buildings on the retained land as is now enjoyed by the building on the Property.

5.2 The following rights are reserved for the benefit of the Council's retained land:

- 5.2.1 a right to the passage of services through the Property together with a right of entry onto the Property (after reasonable notice) to inspect, lay, maintain, divert and connect into such services making good all damage caused;
- 5.2.2 access (after reasonable notice) onto such of the Property as is unbuilt upon to carry out any necessary works of repair and maintenance to buildings on the Property;
- 5.2.3 all rights of support and shelter;
- 5.2.4 a right of way over the access roads on the property.

The persons exercising such rights must cause as little damage and inconvenience as is consistent with the proper exercise of the rights and make good any damage caused:

- 5.2.5 support and protection from the buildings on the Property as is now enjoyed by the building on the retained land;
- 5.2.6 any right to light or air or other easement right or privilege which could prejudicially affect the future rebuilding alteration or development of any part of the retained land.

5.3 Keepmoat covenants:

- 5.3.1 to comply with all matters on the title and indemnifies the Council against any costs or liabilities after the date of the Transfer;

- 5.3.2 not to cause any damage to or park vehicles on or otherwise obstruct or deposit mud on the Property Access Roads;
- 5.3.3 not to carry out any trade or business from the Property or use the property other than as a private dwelling house (use as a live/work unit and the provision of social housing is not a breach of this covenant);
- 5.3.4 not to carry out any development at the Property within the period of 15 years following the transfer other than that permitted by the planning permission obtained under the Agreement.

6 June 2016

