



REPORT OF:	DIRECTOR OF FINANCE AND ORGANISATION
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TO:	EXECUTIVE
DATE:	18 TH OCTOBER 2018
EXECUTIVE MEMBER:	COUNCILLOR T. SCHOFIELD

KEY DECISION REQUIRED:	NO
WARD (S) AFFECTED:	ALL

SUBJECT:	OVERAGE DUE IN RESPECT OF SITE IN BLACKBOROUGH ROAD, REIGATE
RECOMMENDATIONS: (i) That the Director of Finance and Organisation be authorised to agree settlement of the Blackborough Road overage matter with Raven Housing Trust on the revised basis set out in the report in Part 2 of the meeting's agenda.	
REASONS FOR RECOMMENDATIONS: The terms of the original overage provisions relating to the Blackborough Road site are relatively unusual and their strict application results in an onerous overage obligation. It is considered that the proposed settlement, which adopts the principle of the original provisions and reflects the value of the additional accommodation in the completed development, is both commercial and equitable. The proposed settlement will also assist in maintaining the Council's partnership working relationship with Raven Housing Trust.	
EXECUTIVE SUMMARY: In 2009, Raven Housing Trust acquired a development site that was subject to overage provisions benefiting the Council. These overage provisions were triggered in 2010 and the amount of overage payable was assessed but, for reasons set out in the report, the overage payment has not yet been collected. Following a review of the overage provisions it is considered that the provisions are onerous. Their strict application results in a financial obligation that is disproportionate to the additional accommodation in the completed development, as compared to the original	

planning permission.

This report therefore recommends a settlement on a revised basis, full details and financial implications of which are set out in a report in Part 2 of the meeting's agenda.

Executive has authority to approve the above recommendations

STATUTORY POWERS

1. Section 123 of the Local Government Act 1972 places a duty on Local Authorities to dispose of land for the best consideration which can reasonably be achieved, except in specific circumstances or with the consent of the Secretary of State.

BACKGROUND

Blackborough Road

2. In 2006 The Council sold its former Blackborough Road Depot site at auction to Goldcrest Homes. The site was sold with outline planning permission and subject to overage provisions relating to intensification of development.
3. Goldcrest Homes subsequently obtained planning permission for an alternative scheme and, in 2009, marketed the site with the benefit of the new planning permission. The site was acquired by Raven Housing Trust.
4. During the acquisition, Raven enquired as to the amount of overage that would be payable if the Goldcrest scheme was implemented and the Council confirmed a figure.
5. In 2010, Raven subsequently implemented an amended scheme but did not approach the Council regarding overage until the scheme was close to completion. At that stage it was established that the revised overage liability for the amended scheme was considerably higher than the liability for the Goldcrest scheme.
6. Raven accepted that the overage obligation had been correctly calculated but disputed the obligation on the basis that the provisions were onerous and payment of the full sum would, in effect, mean that the scheme made a loss.

KEY INFORMATION

7. As Raven Housing Trust is a key partner of the Council in delivery of affordable housing such as this development, we have undertaken a review of these overage obligations.
8. As a result of that review it is now considered that the original provisions are unusually onerous, because their strict application results in a payment that is disproportionate to the additional development permitted by the implemented planning permission, compared to the original scheme.
9. We have, therefore, looked again at the intention of the overage requirements and are recommending a revised settlement. This settlement is based on the principles of the original provisions but adapts the onerous element and results in a figure that is commercial, reflecting the additional accommodation in the completed development, and is considered to be both proportionate and reasonable.

10. Details of the original and new overage calculations are set out in the report in Part 2 of the meeting's agenda.

OPTIONS

Option 1

11. Agree settlement of the Blackborough Road overage matter with Raven Housing Trust on the basis of the revised overage calculation set out in the report in Part 2 of the meeting's agenda. **This is the recommended option**, as it will result in a commercially justifiable payment that reflects the value of the additional accommodation in the completed development as compared to the original planning permission.

Option 2

12. Require payment based on the strict application of the overage provisions. **This is not the recommended option**. Although the Council has a contractual basis for requiring the higher payment, strict application of the provisions does result in a figure that is significantly disproportionate to the additional accommodation.
13. Adopting the strict position would result in Raven Housing Trust having made a retrospective loss on the development and could damage the Council's working relationship with a key partner organisation in the delivery of affordable housing in the borough.

LEGAL IMPLICATIONS

14. The Council's obligation to obtain best consideration in accordance with Section 123 of the Local Government Act 1972, as referred to in paragraph 1 above, was ensured as a result of the original sale of the property at public auction in 2006. The overage provisions formed part of that sale contract.
15. As set out in paragraph 9 above, the revised overage calculation will still result in a payment that reflects the value of the additional development based on the principles of the overage provision, therefore satisfying the requirement to obtain best consideration.

FINANCIAL IMPLICATIONS

16. The financial implications are set out in the exempt report in Part 2 of the meeting's agenda.

EQUALITIES IMPLICATIONS

17. There are no equalities implications arising from this proposal.

COMMUNICATION IMPLICATIONS

18. Raven Housing Trust is aware that re-consideration is being given to these overage provisions.
19. It is not anticipated that there will be significant communications implications as a result of this recommendation.

RISK MANAGEMENT CONSIDERATIONS

20. There are no risk implications arising from this proposal.

CONSULTATION

21. Executive Members have been consulted regarding this proposal.

POLICY FRAMEWORK

22. Two of the key elements in the Council's vision set out in our Five Year Plan 2015-2020 are to be a leading Council recognised by our residents, peers and partners and to be an increasingly commercial organisation.
23. It is considered that the implementation of this recommendation would support these objectives by enhancing the Council's reputation with Raven Housing Trust generally and in terms of being a good partner with which to do business. The latter would be demonstrated by the Council taking a commercial view to adapt a contractual term that is not achieving its intended purpose, and which would otherwise result in a disproportionate benefit to the Council over a partner organisation.

Background Papers:

None.