

REPORT TO: Cabinet Member Regeneration
Cabinet

DATE: 29th September 2010
30th September 2010

SUBJECT: Proposed amendment to the Overarching Development Agreements with Bellway Homes Limited and Keepmoat Limited.

WARDS AFFECTED: Linacre, Derby, Litherland.

REPORT OF: Alan Lunt - Neighbourhoods and Investment Programmes Director

CONTACT OFFICER: Tom Clay, HMR Programme Manager
0151-934 4849

EXEMPT/ CONFIDENTIAL: No

PURPOSE/SUMMARY:

To request approval to make a minor amendment to the Overarching Development Agreements with Bellway Homes Limited and Keepmoat Limited.

REASON WHY DECISION REQUIRED:

The Neighbourhoods and Investment Programmes Director does not have delegated authority to make decisions relating to such matters.

RECOMMENDATION(S):

That the proposed amendment to Paragraph 6.3 of Schedule 2 to the Overarching Development Agreements between the Council and Bellway Homes Limited and between the Council Keepmoat Limited as set out in paragraph 4 of this report be approved.

KEY DECISION: No

FORWARD PLAN: N/A

IMPLEMENTATION DATE: Upon the expiry of the call in period for the minutes of the meeting

ALTERNATIVE OPTIONS: If left as they are, the agreements would be out with legal advice and the Council would risk further High Court challenges at a later date.

IMPLICATIONS:

Budget/Policy Framework: None

Financial:

There are no financial implications.

<u>CAPITAL EXPENDITURE</u>	2009 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal:

These changes are necessary as a consequence of legal advice.

Risk Assessment:

This change will reduce the risks associated with legal challenges to vesting property pursuant to Compulsory purchase Orders to which the above overarching development agreements are material.

Asset Management:

N/A

CONSULTATION UNDERTAKEN/VIEWS

Head of Legal Services has been consulted in the preparation of this report.
FD 499 – The Interim Head of The Finance & IS has been consulted and has no comments on this report

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		x	
2	Creating Safe Communities		x	
3	Jobs and Prosperity		x	
4	Improving Health and Well-Being		x	
5	Environmental Sustainability		x	
6	Creating Inclusive Communities		x	
7	Improving the Quality of Council Services and Strengthening local Democracy	x		
8	Children and Young People		x	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

May 12th 2005: Adoption of Overarching Development Agreement with Bellway Homes.

October 6th 2005: Confirmation of Adoption of Overarching Development Agreement with Bellway Homes.

October 6th 2005: Adoption of Overarching Development Agreement with Keepmoat PLC in respect of the Bedford / Queens and Worcester Housing Market Renewal Neighbourhood

Background

1. Members will recall that, following the confirmation of the making of the Compulsory Purchase Order for part of the Klondyke and Hawthorne Road area (the Sefton Metropolitan Borough Council (Klondyke and Hawthorne Road, Bootle) Compulsory Purchase Order 2005), there was a series of lengthy and costly legal challenges to the Secretary of State's decision, and at a later date, an estoppel case and subsequently a judicial review case brought against the Council in relation to the Vesting of certain property within the Order Lands.
2. At these latter proceedings, the claimants alleged that the wording of the Overarching Development Agreement (ODA) at paragraph 6.3 of schedule 2 might fetter the ability of the Council to use its discretion in making a General Vesting Declaration. Although not mentioned in the written judgement, it was suggested by the judge in his verbal summing up that the wording was, in effect, inappropriate and might be reconsidered.
3. It was therefore considered prudent to review this wording to ensure that the agreements are explicit in not fettering the Council's ability to exercise its discretion in relation to the making of General Vesting Declarations pursuant to a confirmed Compulsory Purchase Order. This review has been undertaken by the lawyers dealing with the agreements with Bellway and Keepmoat for the Council, FDR Law, and their recommended revised wording given below.
4. The relevant clause, which is identical in both the agreements with Bellway Homes Limited and Keepmoat Limited, is set out below, with the recommended amendment shown in bold italics. Approval is sought to the amended Paragraph 6.3 below:

"Following the confirmation of the CPO and the same becoming operative the Council shall (subject to paragraph 6.4 and having regard to the overall timetable for the Development) ***where it would be reasonable for the Council to do so in the exercise of its statutory powers*** use all reasonable endeavours to secure the vesting of all Outstanding Interests in the Council by means of the GVD procedure or (in respect of any Outstanding Interest not capable of being vested) the notice to treat/notice of entry procedure."

5. The amendment will limit any opportunity for a challenge similar to that faced at the High Court in respect of the first phase CPO and therefore approval is recommended.