

**Classification:**

**Key Decision:**

## **Gravesham Borough Council**

**Report to:** Leader of the Executive  
**Date:** 29 October 2015  
**Reporting officer:** Assistant Director (Governance and Law)  
**Subject:** The Heritage Quarter – Development Agreement

### **Purpose and summary of report:**

To seek authority to amend the Development Agreement to enable Edinburgh House Estates (EHE) to secure the necessary funding to allow the development to proceed.

### **Recommendations:**

It is recommended that the Assistant Director (Governance and Law) in consultation with The Leader, be authorised to take all necessary steps, to amend the Development Agreement to extend the termination date to a date to be agreed with EHE

## **1. Introduction**

- 1.1 On the 2<sup>nd</sup> February 2007 the Council entered into a Development Agreement with Queensridge Properties Ltd, a special purpose vehicle for the developers, Edinburgh House Estates Ltd to develop the Heritage Quarter.
- 1.2 The Development Agreement was drafted to set out the requirements of the Council whilst recognising the developer's need, in uncertain economic times, to control the timing of the development coming forward for commercial and viability reasons.
- 1.3 To ensure the timing of the scheme was in the developer's hands certain pre-conditions dealing with, inter alia, viability and the availability of funding needed to be satisfied before the agreement itself became live or "unconditional". Once the agreement became unconditional then the developers would have 6 months to enter into a Building Contract or Letter of Intent with a contractor giving the contractor a vested interest in seeing the scheme come forward together with an enforceable right to ensure that the scheme was built out.
- 1.4 In order to ensure that the agreement progressed in accordance with a time frame suggested by EHE the agreement contained a number of milestones setting out dates by which stages such as the submission of a planning application were to be made. Failure to meet those milestones would give the option for either party to terminate the agreement. All of those milestones have been met and are no longer relevant. There was however, a long stop or 'termination' milestone by

which date the agreement had to become 'unconditional' or either party could choose to terminate.

- 1.5 The termination date has now passed however, that does not mean the agreement is at an end; it does mean that either party could end the agreement. Neither party has exercised that option.

## **2. Judicial Review**

- 2.1 This planning process was directly challenged in May 2014 by a local pressure group by way of Judicial Review in the High Court. This proved to be a protracted and expensive procedure with the High Court finally ruling on 2<sup>nd</sup> March 2015 in the Council's favour.
- 2.2 In light of the above, Edinburgh House Estates has requested a further extension of the termination dates to the end of December 2017/beginning of 2018 to take into account the further delays that have occurred to the project through the protracted process of achieving planning permission and dealing with the Judicial Review

## **3. Conclusions**

- 3.1 The key sticking point in the scheme going forward is that, all the time that the Council have the ongoing option to terminate the agreement, the funders are not prepared to lend the necessary finance. Whilst it is clearly not our intention to terminate the agreement having got this far it remains a legal possibility and one that will prevent the developers from acquiring the necessary financial backing to take the scheme forward.
- 3.2 In order for the funding institutions to be satisfied, so that the scheme can proceed, it is recommended that the Development Agreement is formally varied in the way set out in this report.

<b>Legal</b>	None – it is an administrative decision		
<b>Finance and Value for Money</b>			
<b>Risk Assessment</b>	The risk of not varying the agreement in that the developers may not be able to raise the funds to take the project forward		
<b>Equality Impact Assessment</b>	<b>Screening for Equality Impacts</b>		
	<b>Question</b>	<b>Answer</b>	<b>Explanation</b>
	a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	<b>No</b>	It is an administrative decision
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	<b>Yes</b>	
	c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		
<i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i>			
<b>Corporate Business Plan</b>	Links with Strategic Objective 4 – Economic Development and Regeneration		
<b>Crime and Disorder</b>			